

December 18, 2012

Governor Jerry Brown
State Capitol
Sacramento CA 95812

Re: Safer Consumer Products draft regulations

Dear Governor Brown:

Californians for a Healthy and Green Economy (CHANGE) is a statewide coalition of environmental and environmental justice groups, health organizations, labor advocates, community-based groups, parent organizations, faith groups, and others who are concerned with the impacts of toxic chemicals on human health and the environment.

We have closely tracked the development of the regulations by DTSC to implement the Safer Consumer Products (SCP) regulations under the authority of AB 1879 (Feuer). We appreciate DTSC Director Debbie Raphael's conscientious efforts to involve all stakeholders in the regulation development process.

We are writing today because we are very concerned to hear DTSC may be considering significant changes to the draft SCP regulations. We are surprised as well because it has been the understanding of all stakeholders that the regulations are nearing completion. The draft regulations have been through formal public comment after an exhaustive process over several years to craft a program that is, in Director Raphael's words, "meaningful, practical, and legally defensible."

Although we have not had any official communication from DTSC about this, we want to convey and reinforce some of our key positions on the draft regulations directly to you since you have followed this closely.

Chemicals of Concern list

We are dismayed to hear that there may be reductions to the Chemicals of Concern list. A large Chemicals of Concern (CoC) list has been a cornerstone of the draft regulations from the beginning with support from you and Secretary Rodriquez. It is an essential piece of the program and must be preserved.

DTSC's current proposal for a CoC list is based on the work of authoritative bodies that have relied on peer-reviewed scientific research to list chemicals of concern with identified hazard traits. California would distinguish itself by aligning with the global consensus on chemical hazards in the scientific community. Our state should recognize that chemicals already listed by respected authoritative bodies are "of concern."

DTSC itself has emphasized the importance of the large CoC list because of its potential to send market signals that will immediately begin to reduce toxic exposures to Californians. Many businesses in California support the intent of the regulations so they will have confidence their consumer products are safer and less toxic.

Asian and Pacific Islander Obesity Prevention Alliance * Bayview Hunters Point Community Advocates * Black Women for Wellness * Breast Cancer Action * Breast Cancer Fund * California Healthy Nail Salon Collaborative * California Latinas for Reproductive Justice * California Pan-Ethnic Health Network * Californians Against Waste * Californians for Pesticide Reform * Center for Environmental Health * Center for Race, Poverty and Environment * Clean Water Action * Coalition for Clean Air * Commonwealth * Communities for a Better Environment * East Yard Communities for Environmental Justice * Environment California * Environmental Working Group * Forward Together (formerly Asian Communities for Reproductive Justice) * Green Schools Initiative * Green Science Policy Institute * Healthy 880 Communities * Healthy Child, Healthy World * Healthy Children Organizing Project * Instituto de Educación Popular del Sur de California * Just Transition Alliance * Making Our Milk Safe (MOMS) * Movement Strategy Center * Pesticide Action Network North America * Physicians for Social Responsibility - Los Angeles * Science and Environmental Health Network * Silicon Valley Toxics Coalition * United Steel Workers - Local 675 * Worksafe

www.change-california.org

Contact: Kathryn Alcántar, CHANGE Campaign Director - chanqecalifornia@gmail.com or 510.655.3900 x315

Movement in the market is critical, and the large CoC list is an essential tool since all observers agree that DTSC, at this time, unfortunately does not have the resources to mount a comprehensive program. Stimulating the development of green chemistry and an entire new generation of safer consumer products will drive the kind of innovation California is known for. And yes, it is a job creator for our state. Resistance to a large CoC list comes in part from companies that are not based in California.

Beyond this, it is worth reminding ourselves that the statute requires DTSC to identify and prioritize chemicals "of concern." The Department is required by law to do this. This was the intent and policy objective of AB 1879. Furthermore, the statute requires DTSC to "reference and use, to the maximum extent feasible, available information from other nations, governments, and authoritative bodies that have undertaken similar chemical prioritization processes, so as to leverage the work and costs already incurred by those entities and to minimize costs and maximize benefits for the state's economy."

The creation of a new list of "chemicals under consideration" (or an equivalent phrase) is unnecessary and would be unwise. A new list that is not mandated by the statute has the potential to destabilize and delay the regulatory framework DTSC is building with these regulations.

We can't stress enough how important it is to CHANGE and other public interest groups in California to preserve the large CoC list as outlined in the current draft regulations. Without a large CoC list, our continued support for the regulations will be difficult to sustain.

Alternatives Analysis Thresholds / *de minimis* exemptions

CHANGE strongly supported DTSC's decision to take on the responsibility of setting an Alternatives Analysis Threshold (AAT) for chemicals on a case-by-case basis. From a scientific point of view, this was the appropriate course to take. Peer-reviewed research over the past twenty years has clearly demonstrated that low dose effects are real for some chemicals and/or potentially more harmful at sensitive life stages. DTSC is to be commended for recognizing this.

We hear, however, that alternate ideas are being considered on this issue, such as reinstating a *de minimis* exemption of some kind. Again, we are deeply concerned that this is being re-opened for discussion at this time in the regulation development process.

In addition to the scientific merit of retaining the case-by-case AAT provisions, CHANGE has argued that the AAT should be regarded as one of several criteria to be used in setting priorities. It should not be construed to involve the development of a risk assessment. Setting a customized AAT should be a relatively straightforward task by reviewing the peer-reviewed literature.

We believe it is vital for DTSC to retain the ability to set AATs based on scientific judgment. This is another opportunity for DTSC demonstrate leadership for other regulatory bodies about what is appropriate and necessary to protect the public interest.

"Potential" vs. "Ability" language

We have heard DTSC may be open to returning to earlier language that uses "potential" vs. "ability" to cause harm. CHANGE fully supports a proposal whereby the bar for a chemical to be considered "of concern" is its potential to cause harm, not its ability to cause harm.

Early drafts of these regulations consistently used the "potential" language. Its replacement with "ability" language was a significant weakening of the draft regulations. How will DTSC demonstrate a chemical's "ability" to cause harm? The bar for that judgment is very high, greatly diminishing the number of chemicals that could be addressed. Beyond this, any DTSC decision could be more easily challenged.

It is important to point out that the word "potential" is used in the enabling statute. DTSC has been scrupulous in closely following the language of the statute in other areas of the draft regulations, and so returning to "potential" language is the more legally-defensible position.

We of course acknowledge that "potential to cause harm" must be carefully defined, and this could be a useful task for input to DTSC from the Green Ribbon Science Panel.

We want to be clear that we gratefully acknowledge the exemplary work of Director Raphael and her staff on this part of the California's Green Chemistry Initiative. California has invested a lot in the success of this program, and we ask that you continue to support a strong program with special attention to the issues raised in this letter.

Respectfully,



Kathryn Alcántar

CHANGE Campaign Director

cc: Matt Rodriguez
Gina Solomon
Debbie Raphael
Odette Madriago
Nancy McFadden
Ken Alex
Mike Rossi
Colleen Heck
Claudia Polsky